

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

ISAAC CHAVEZ,
Charging Party/Appellant,

HRB CASE NO.0220267

-v-

REMAND ORDER

CABELA'S WHOLESALE, LLC,
Respondent/Appellee.

Charging Party, Isaac Chavez, filed a complaint with the Department of Labor & Industry (Department), which alleged unlawful discrimination in employment on the basis of vaccination status. Following an informal investigation, the Department determined that reasonable cause supported Chavez's allegations. The case went before the Office of Administrative Hearings of the Department of Labor & Industry, which held a contested case hearing, pursuant to Mont. Code Ann. § 49-2-505. The hearing officer issued a Decision on October 13, 2022. The hearing officer entered judgment in favor of Cabela's Wholesale, LLC.

Charging Party filed an appeal with the Montana Human Rights Commission (Commission). The Commission considered the matter on January 19, 2023. Charging Party, Isaac Chavez, appeared and presented oral argument on behalf of himself. Joshua Kirkpatrick, attorney, appeared and presented oral argument on behalf of Cabela's Wholesale, LLC.

STANDARD OF REVIEW

The Commission may reject or modify the conclusions of law and interpretations of administrative rules in the hearing officer's decision but may not reject or modify the findings of fact unless the Commission first reviews the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. Mont. Code Ann. § 2-4-621(3). The commission reviews conclusions of law for correctness

and to determine whether the hearing officer misapplied the law to the facts of the case. The commission reviews findings of fact to determine whether substantial evidence exists to support the particular finding. Admin. R. Mont. 24.9.123(4)(b); *Schmidt v. Cook*, 2005 MT 53, ¶ 31, 326 Mont. 202, 108 P.3d 511. “Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. It consists of more than a mere scintilla of evidence but may be less than a preponderance.” *State Pers. Div. v. DPHHS*, 2002 MT 46, ¶ 19, 308 Mont. 365, 43 P.3d 305.

DISCUSSION

Before the Commission, Mr. Chavez argues that he was singled out for based on his vaccine status, and that Cabela’s could have accommodated him by requiring all employees, regardless of vaccination status, to mask and test.

Before the Commission, Cabela’s argues that Montana Code Annotated § 49-2-312 was preempted by the Occupational Health and Safety Administration (OSHA) Emergency Temporary Standards (ETS) at the time Mr. Chavez alleges he was discriminated against and so therefore § 312 was not in effect at the time of the claim. Cabela’s argues it was required to follow the ETS issued by OSHA and could not comply with § 49-2-312 while still complying with the ETS.

After careful consideration of the complete record and the argument presented by the parties, the Commission determines this case presents a constitutional issue regarding the validity of a statute- specifically whether Montana Code Annotated § 49-2-312 was preempted by federal regulation.

Constitutional questions, such as federal preemption of a state law, are properly decided by a judicial body, not an administrative official, under the constitutional principle of separation of powers. Art. III, Section 1, 1972 Mont. Const. *See also Jarussi v. Bd. of Trs.*, 204 Mont. 131, 135-36, 664 P.2d 316, 318 (1983). Though the Commission functions as a quasi-judicial body, it

remains an executive branch administrative agency, and therefore unable to determine a constitutional question. OAH is similarly without authority to make such determinations.

Therefore, the Hearing Officer's conclusion that the ETS preempted Montana Code Annotated § 49-2-312 is incorrect. This conclusion is vacated.

ORDER

IT IS HEREBY ORDERED, that the hearing officer decision is REJECTED. The Commission remands this case to the Office of Administrative Hearings for further proceedings consistent with this opinion.

DATED this 27th day of March 2023.



Peter M. Damrow, Chair
Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned secretary for the Human Rights Commission certifies that a true and correct copy of the foregoing ORDER was mailed to the following by U.S. Mail, postage prepaid, on this 27th day of March 2023.

Isaac Chavez
7957 US Hwy 2 West
Kila, MT 59920

Joshua Kirkpatrick
Littler Mendelson, PC
1900 16th Street West, Suite 800
Denver, CO 80202

A handwritten signature in black ink that reads "Annah Howard". The signature is written in a cursive style with a horizontal line underneath it.

Annah Howard, Legal Secretary
Montana Human Rights Bureau